

October 15, 2004

MEMORANDUM TO: Jeffrey A. May
Acting Assistant Secretary, Import Administration

FROM: Ronald K. Lorentzen
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Results

Summary

We have analyzed the substantive responses of the interested parties in the second sunset review of the antidumping duty investigation covering natural bristle paint brushes and brush heads ("natural paint brushes") from the People's Republic of China ("PRC"). We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping
 - A. Weighted-average dumping margin
 - B. Volume of imports
2. Magnitude of the margin likely to prevail
 - Margins from investigation

History of the Order

On December 26, 1985, the Department of Commerce ("Department") published its final affirmative determination of sales at less than fair value ("LTFV") in the *Federal Register* with respect to imports of natural paint brushes from the PRC. *See Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Determination of Sales at Less Than Fair Value*, 50 FR 52812 (December 26, 1985). On February 14, 1986, the Department published in the *Federal Register* an antidumping duty order on natural paint brushes from the PRC and later amended the order to change the effective date to February 6, 1986. *See Antidumping Duty Order*;

Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China, 51 FR 5580 (February 14, 1986) and *Amended Antidumping Duty Order; Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China*, 51 FR 8342 (March 11, 1986). Since the issuance of the antidumping order, the Department has conducted several administrative reviews with respect to imports of natural paint brushes from the PRC, two of those reviews since the continuation of the order.¹

The Department published its notice of initiation of the first sunset review on January 4, 1999, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five-Year Reviews, Part XI*, 64 FR 364 (January 4, 1999). As a result of that review, the Department found that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. See *Final Results of Expedited Sunset Review: Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China*, 64 FR 25011 (May 10, 1999). In that determination, the Department also reported to the International Trade Commission ("ITC") as the likely dumping margin for Hebei Animal By-Products Import/Export Corporation ("Hebei")² a rate of 351.92 percent and all the other Chinese manufacturers or exporters covered by the order a rate of 351.92 percent. On August 6, 1999, the Department published the notice of continuation of the antidumping order. See *Continuation of Antidumping Order: Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China*, 64 FR 42911 (August 6, 1999).

Background:

On May 3, 2004, the Department published the notice of initiation of the second sunset review of the antidumping duty order on natural paint brushes from the PRC pursuant to section 751(c) of the Act. See *Initiation of Five-Year ("Sunset") Reviews*, 69 FR 24118 (May 3, 2004). The

¹*Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 55 FR 42599 (October 22, 1990); *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 52917 (October 9, 1996); *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 11823 (March 13, 1997); *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 12449 (March 13, 1998); *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 27506 (May 20, 1999); *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 45753 (July 25, 2000); *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review*, 65 FR 55941 (September 15, 2000); *Notice of Final Results of Administrative Review: Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China*, 68 FR 31683 (May 28, 2003). In these reviews, Hunan Provincial Native Produce and Animal By-Products I/E Corp. ("Hunan"); Peace Target, Inc.; and Hebei all received separate rates apart from the PRC-wide rate.

²Hebei merged with two other companies and is now a department within Hebei Founder Import and Export Company. See *Notice of Preliminary Results of Antidumping Review: Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China*, 65 FR 13944 (March 15, 2000).

Department received the Notice of Intent to Participate from the domestic interested parties the Natural paint Applicator Division of the American Brush Manufacturers Association and its participating member companies: Shur-Line, Bestt Liebco, Wooster Brush Company, Purdy Corporation, True Value Manufacturing, and Elder & Jenks, Inc. (collectively “the domestic interested parties”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s Regulations (“Sunset Regulations”). The domestic interested parties claimed interested party status under sections 771(9)(C) and (E) of the Act, as domestic manufacturers of natural paint brushes and a trade association whose majority of members manufacture, produce, or wholesale a domestic-like product in the United States. We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of this antidumping duty order would likely lead to a continuation or recurrence of dumping by the Chinese producers of the subject merchandise due to continued dumping. *See* Substantive Response of the Domestic Interested Parties (“Substantive Response”) (June 2, 2004) at 13. The domestic interested parties contend that dumping by at least 47 Chinese exporters has continued at significant levels since the order was imposed in 1986. *Id.* at 14. Also, the domestic interested parties point out that the imports of natural paint brushes have decreased significantly since the antidumping order was imposed in 1986. *Id.* The domestic interested parties state that Chinese producers exclusively exported natural paint brushes at the time of the original investigation; however, subsequent to the order, the Chinese producers began to export synthetic filament natural paint brushes of which natural paint brushes account for 6.2 percent of total natural paint brush import volumes, whereas the synthetic filament natural paint brushes account for the remainder. *Id.* at 15. Based on continued dumping and the significant decrease in import volumes, the domestic interested parties reason that revocation of the order would likely result in a significant

increase of Chinese imports at dumped prices. *Id.*

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), specifically the Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”), and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis. *See Sunset Policy Bulletin at section II.A.2.* In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See Sunset Policy Bulletin at section II.A.3.*

Consistent with the *Sunset Policy Bulletin*, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where, *inter alia*, dumping continued at any level above *de minimis* after the issuance of the order. The Department has conducted a number of reviews since issuance of the order in which it found that dumping continued at levels above *de minimis* for the PRC exporter. *See* Footnote 1 of this Memorandum. For example, in a review completed since the continuation of the order, a PRC respondent was found to have been dumping at a rate of 32.74 percent. *See* 65 FR 55941 (September 15, 2000).

In addition, pursuant to 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order. *See also Sunset Policy Bulletin at section II.A.1.* Using statistics provided by the ITC Dataweb (see attached), the Department finds that imports have fluctuated but have never come close to pre-order levels. Since 1999, the year of completion of our first sunset review, imports have fluctuated and then increased dramatically in 2003, although not to the level of pre-order volumes. *See* attached import statistics. Volume before the order was 38,000,000 units, and the highest volume, in 2003, was only 10,895,923 units. Compare attached import statistics and *Final Results of Expedited Sunset Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China*, 64 FR 25011, 25012 (May 10, 1999). Therefore, given that dumping has continued at levels above *de minimis* over the life of the order and import volumes have declined overall, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin:

Interested Party Comments

In its substantive response, the domestic interested parties request that the Department

determine that the dumping margins for the PRC exporters that had obtained a separate rate and for the PRC entity at 351.92 percent are the margins that are likely to prevail if this order were revoked. *See* Substantive Response at 17. The domestic interested parties argue that circumstances for reporting a more recent and higher margin, as described in the *Sunset Policy Bulletin* and recent determinations, warrant the Department to report to the ITC a more recently calculated margin for a particular company where, for that company, dumping margins increased, even if the increase was a result of the application of best information or facts available. *See Sunset Policy Bulletin* II.B.2. In this instance, the domestic interested parties state that Chinese exporters or producers, with the exception of Hunan and Hebei, have consistently dumped natural paint brushes at margins substantially higher than the original 127.07 percent margin. *See* Substantive Response at 17. The domestic interested parties further state that the Department has issued final determinations of dumping margins of 351.92 percent for seven companies in five review periods as well as maintaining the 351.92 margin rate for the PRC entity through the most recent review. *Id.* Therefore, the domestic interested parties urge that the Department should find that this recent behavior is probative of the likely behavior of the Chinese manufacturers and exporters of natural paint brushes and report to the ITC the more recent and higher margin of 351.92 percent for the PRC exporters that had obtained a separate rate and for the PRC entity if the order were revoked.

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the investigation for each company, and for companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “All Others” rate from the investigation. However, this case involves a non-market economy. In this case, although the Department does not have an “all others” rate, there is a “PRC-wide rate” which applies to all imports from exporter who have not established their eligibility for a separate rate. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin, to report to the ITC.

In the prior sunset review, the Department reported to the ITC a margin from a recently completed review. The Department used that number because it was able to find a correlation between a significant rise in the dumping margin for the 1994-1995 period of review and a substantial increase in imports during that period of review; moreover, after publication of the results of that review, imports dramatically decreased. *See Final Results of Expedited Sunset Review: Natural Bristle Paint Brushes and Brush Heads from the People’s Republic of China*, 64 FR 25011, 25013 (May 10, 1999). Based on the facts in this review, the Department has determined to report to the ITC the same margin for all Chinese manufacturers and exporters. Although two companies have received lower margins since the last sunset review, the Department does not have information about the relative market share of the parties who have been reviewed since the continuation of the order. Furthermore, respondent interested parties provided no evidence or argument that the most recently calculated margins are more indicative of the margin likely to prevail if the order were to be revoked. Therefore,

we determine that the dumping margins reported to the ITC in the prior sunset review are still probative of the behavior of all PRC producers and exporters of natural paintbrushes if the order were revoked. Thus, we will report to the ITC margins of 351.92 percent for Hebei, Hunan, and Peace Target, Inc. and 351.92 percent for the PRC-wide rate.

Final Results of Review

We determine that revocation of the antidumping duty order on natural paint brushes from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Hebei Animal By-Products Import/Export Corp.	351.92
Hunan Provincial Native Produce and Animal By-Products Import/Export Corp.	351.92
Peace Target, Inc.	351.92
PRC-wide	351.92

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register*.

AGREE X

DISAGREE

ORIGINAL SIGNED

Jeffrey A. May
Acting Assistant Secretary
for Import Administration

10/15/04

(Date)